U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31673040

Date: JULY 9, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an electrical engineer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Petitioner filed the Form I-140 petition in December 2020. The Director of the Nebraska Service Center denied the petition in June 2022, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed a subsequent appeal in February 2023; a motion to reopen in June 2023; and a motion to reconsider in December 2023. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner discusses an air purifier that uses ultraviolet (UV) light, which we briefly mentioned in our December 2023 decision. The Petitioner submits photographs showing that he brought a prototype of the device to a scientific conference, and that a device has been installed in a classroom at the [redacted] The Petitioner asserts that these new facts establish eligibility, because the UV air purifier is more effective than vaccines at preventing the spread of COVID-19. The Petitioner repeats his earlier claim that COVID-19 is caused by fungal or bacterial spores, rather than a virus, and therefore vaccines are not effective against it.[1]

[1] The Petitioner cites no evidence that would overturn the widespread scientific consensus that COVID-19 is caused by a virus, specifically SARS-COV-2.

The Petitioner had also previously asserted that UV air purifiers were widely used in the [redacted] area, but he did not submit evidence to show that the devices in use were the ones he had helped to invent. He also did not show that he originated the idea of using UV rays to purify air or that he had made significant contributions to the advancement of related technology.

In his latest motion, his third overall, the Petitioner makes additional assertions about his UV air purifier. For example, he asserts that he has made an "improvement on [the] current device," using an enclosed, fan-driven ventilator to purify air without exposing people to potentially harmful UV rays. The Petitioner submits photographs of a prototype device, and asserts that his research appeared in a "published journal on . . . social media." The Petitioner does not submit a copy of the article itself or proof of its publication, nor does he submit evidence to establish recognition of the claimed significance of his invention.

Publications can be relevant to eligibility, because the criterion at 8 C.F.R. § 204.5(h)(3)(vi) relates to authorship of scholarly articles in the field, in professional or major trade publications or other major media. When the Petitioner first filed his petition, he did not claim to have published any scholarly articles. In his first motion, the Petitioner referred to "publications" in the form of "a couple of new patents." Patents are not scholarly articles in professional or major trade publications or other major media, and the patents discussed do not appear to relate to UV air purifiers.

The Petitioner's new assertions do not constitute new facts that would warrant reopening the petition. The Petitioner has not documented or even fully identified his claimed publications relating to UV air purification. Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998).

Also, the Petitioner has not shown that these newly claimed publications or his advanced prototype existed at the time he filed the petition in December 2020. The Petitioner must meet eligibility requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). New facts after the filing date cannot establish eligibility as of the priority date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The Petitioner states: "the judge did not receive core information he wanted from my part, and start[ed] to harass my suppliers." The Petitioner does not identify "the judge," and he does not explain or document the claimed harassment of the Petitioner's suppliers. The Petitioner also asserts:

> I received complain[t]s from one working partner that they received a $5M order directly from [the] U.S. government to order the light bulb and request them to produc[e] the light that I have made and invented. . . . If you don't like what I have presented in my petition[, t]hen why do you make such an order from my supplier. And try to pretend nothing ever happened to me.

The Petitioner submits no evidence to corroborate his claims. His assertions lack any details that would permit us to verify them. Most importantly for our purposes, the Petitioner does not explain, on motion, how his new claims show that he meets the specific requirements for classification as an

individual of extraordinary ability. Rather, he asserts that we do not fully understand the significance of his invention.

For the reasons discussed above, the new facts claimed on motion do not establish eligibility. We will therefore dismiss the motion to reopen.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our December 2023 decision, dismissing the Petitioner's second motion, we stated: "Because the Petitioner does not show how we misapplied law or point to policy contradicting our analysis of the evidence, the motion does not satisfy the requirements for a motion to reconsider under 8 C.F.R. § 103.5(a)(3). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied." Our December 2023 decision was not a decision on the merits of the petition; we had addressed those merits in earlier decisions. Therefore, further arguments concerning those merits cannot show that our December 2023 decision was in error.

Although we have notified the Petitioner that the scope of a motion is limited to the immediate prior decision, the Petitioner's latest motion raises merits issues that did not arise in our December 2023 decision. For example, the Petitioner states that we lack "basic knowledge to understand" the significance of his inventions, and that we have engaged in "fishing" by attempting to persuade him to reveal confidential information about those inventions. But our December 2023 decision contained no statements to that effect; we did not discuss the Petitioner's inventions or their claimed significance, nor did we state that the Petitioner could overcome prior dismissals by submitting confidential information. Therefore, the Petitioner's contentions do not establish error in our prior decision.

The Petitioner asserts that our prior decisions lack "any logic," rely on circular reasoning, and "misuse the law." The Petitioner, however, does not elaborate or cite any specific error of law or policy. The general assertion that unspecified errors exist in our December 2023 decision is not a sufficient basis for reconsideration of that decision. The Petitioner also has not shown that our December 2023 decision was incorrect based on the record as it was constituted at the time.

The Petitioner's motion does not meet the requirements of a motion to reconsider. Therefore, we will dismiss the motion. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.